

**UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
REGION 12**

YUENGLING BREWING COMPANY OF TAMPA, INC.¹

Employer

and

Case 12-RC-8469

**INTERNATIONAL UNION OF OPERATING
ENGINEERS LOCAL #925, AFL-CIO**

Petitioner

and

**INTERNATIONAL BROTHERHOOD
OF TEAMSTERS LOCAL 79, AFL-CIO, CLC**

Case 12-RC-8470

Petitioner

DECISION, ORDER, AND DIRECTION OF ELECTION

Upon petitions duly filed under Section 9(c) of the National Labor Relations Act, as amended, a hearing was held before a hearing officer of the National Labor Relations Board.²

Pursuant to the provisions of Section 3(b) of the Act, the Board has delegated its authority in this proceeding to the undersigned.

Upon the entire record in this proceeding,³ the undersigned finds:

1. The hearing officer's rulings made at the hearing are free from prejudicial error and are hereby affirmed.

¹ The names of the parties appear as amended at the hearing.

² The petitions in 12-RC-8469 and 12-RC-8470 were filed on February 14, 2000. Although the petitions were filed by different Petitioners and seek separate units, the matter was consolidated for hearing on February 24, 2000, as the petitions involve the same Employer and would require the resolution of similar issues by the undersigned in making the determination of what constitutes an appropriate unit or units for collective bargaining. On February 17, 2000, the undersigned issued an Order Consolidating Cases and Notice of Representation Hearing.

³ The brief submitted by the Employer has been carefully considered. No briefs were submitted by the Petitioners.

2. The Employer is engaged in commerce within the meaning of the Act and it will effectuate the purposes of the Act to assert jurisdiction herein.⁴
3. Petitioners are labor organizations within the meaning of the Act.
4. A question affecting commerce exists concerning the representation of certain employees of the Employer within the meaning of Section 9(c)(1) and Section 2(6) and (7) of the Act.

Positions of the Parties

At the hearing, the Petitioner in Case 12-RC-8469, referred to hereinafter as “Petitioner Teamsters,” amended the petition to seek a bargaining unit consisting of all production workers - job code 103, employed by the Employer at its Tampa, Florida facility. The Petitioner in Case 12-RC-8470, referred to hereinafter as “Petitioner Operating Engineers,” amended the petition to seek a bargaining unit consisting of all maintenance workers/electricians – job code 101, maintenance workers/machinists – job code 102, and maintenance workers/powerhouse engineers – job code 104, employed by the Employer at its Tampa, Florida facility. The Employer urges a wall-to-wall unit consisting of all of the aforementioned classifications. While Petitioner Teamsters seeks to represent only the production workers, it is willing to proceed to an election if the unit it seeks to represent is deemed inappropriate and an alternate unit is found to be appropriate. Petitioner Operating Engineers, on the other hand, is not willing to proceed to an election if the unit it seeks to represent is deemed inappropriate and an alternate unit is found to be appropriate.

⁴ The Employer is a Florida corporation engaged in the business of brewing, packaging and shipping of malt beverage products. The Employer has an office and place of business located at 11111 North 30th Street, Tampa, Florida. During the past 12 months, the Employer, in conducting its business operations described above, purchased and received products, goods, and materials valued in excess of \$50,000 directly from points located outside the State of Florida.

The Employer employs 14 production workers, 2 maintenance worker/electricians (“electricians”), 4 maintenance worker/machinists (“machinists”), and 5 maintenance worker/powerhouse engineers (“powerhouse engineers”).⁵

Management Function

The Employer’s day-to-day operation is essentially run by three operational managers who share many of the same responsibilities.⁶ All three operational managers report directly to Jim Helmke, the vice-president of operations of D.G. Yuengling & Sons, Inc.⁷, located in Pottsville, Pennsylvania. Each of these managers is primarily responsible for supervising certain employees. John Houseman (“Houseman”), the brewmaster, is responsible for overseeing the brewing function, including brewing maintenance and quality control, and primarily supervises four production workers. The other 10 production employees are employed in the warehousing and packaging function and are primarily supervised by Martin Cooke (“Cooke”), the packaging manager. Cooke is responsible for supervising the packaging operations, including packaging maintenance and packaging quality control. In charge of overall maintenance, both mechanical and electrical, and the powerhouse, is Bud Hardcastle (“Hardcastle”) who primarily supervises the electricians, machinists and powerhouse employees. The parties stipulated that Houseman, Cooke and Hardcastle are Section 2(11) supervisors.

⁵ The term “maintenance employees” will be used hereinafter to refer to the electricians, machinists, and powerhouse employees collectively.

⁶ The parties stipulated that the position of “plant manager,” although currently unfilled, is that of a Section 2(11) supervisor. In addition, the parties also stipulated that Carolyn Goodwin, in “administration,” and Linda Roubos, the comptroller, are to be excluded from any unit found appropriate.

⁷ Although D.G. Yuengling & Sons, Inc., hereinafter referred to as the Pottsville facility, and the Employer are separate corporate entities, they share identical corporate directors and officers. The parties stipulated that Jim Helmke is employed by D.G. Yuengling & Sons, Inc. and is not employed by the Employer.

Employer's Operations, Production Process and Degree of Functional Integration

The Employer commenced its operations in August of 1999, after purchasing the facility from The Stroh Brewery Company (“Stroh”),⁸ which ceased its operations in January of 1999. The Employer’s warehousing, brewing and packaging activity is located within a main building. The powerhouse, a one-story building, is located in a separate building several feet apart from the main building. With the exception of the powerhouse engineers, who are exclusively assigned to the powerhouse, all employees are assigned to the main building.

The Employer’s production work is divided into two separate functions, brewing and packaging. Both of these functions are located on the first floor of the main building. The Employer’s brewing function is conducted on five different floors located within the main building. After the brewing process ends, the product is sent to a packaging release cellar tank and then to packaging where it is put in various containers such as bottles, cans or kegs. The product then goes into a pasteurizer vat, then into a packer, and finally into a palletizer. From there the product is either placed on the floor or direct-line loaded on trucks for shipping.

The Employer introduced new equipment after purchasing the facility from Stroh to accomplish its packaging function which included a twelve-pack can machine, a twelve pack bottle machine, and a bulk glass depal. It has also added improvements such as a new keg line, a new water treatment system and a new water cooling system.

The Employer operates for the most part with only one shift, five days a week. The powerhouse, however, is a 24 hour, seven-day operation. Maintenance employees will report to

⁸ Petitioner Teamsters was the collective-bargaining representative of Stroh’s production employees and Petitioner Operating Engineers was the collective-bargaining representative of Stroh’s maintenance employees, except for electricians who were represented by Local 108 of the International Brotherhood of Electrical Workers.

work anywhere between 4 a.m. and 7 a.m. while production employees report to work between 4 a.m. and 5 a.m. The facility shuts down whenever the day's production is completed, generally around 5:00 p.m.

During the brewing process, Houseman testified that apart from the production employees who are engaged in brewing, an electrician must be present. The production line, started at the beginning of the day, requires both production and maintenance employees to get the line running. In addition, on a daily basis maintenance employees assist the production employees at the end of the day on the production line and in packaging to ensure the completion of the production work. Houseman testified that at least one mechanic and one electrician remain at the facility until the production line shuts down. These maintenance employees engage in tasks which involve removing bottles from the pasteurizer or helping with the packer. A machinist testified that he will spend up to an hour at the end of the day in helping to close down the production line.

Houseman testified that it is common for maintenance employees to help on the production line to assist in "whatever needs to get done." This work involves taking glass out of the drop pack, helping on the palletizer, and pulling bottles or cans out of the pasteurizer. There have been other specific times when maintenance employees have been called upon to assist production employees. For example, Houseman testified to a recent situation where the bulk glass depal was not running and several maintenance and production employees worked together to repair the machine. He stated that in that situation an electrician was running the machine, a task normally handled by a production employee. In June of 1999, production workers were called upon to assist in maintenance work by tearing out two palletizers and burning and demolishing certain equipment.

When a piece of equipment on the production line goes down, the production employee will stay with the maintenance employee to assist him in repairing the machine. A machinist testified that he works together with production employees to work out problems. For example, he stated that many times he needs the production employee to jog the machine or get it lined up.

Employees from one classification will seek out the assistance of an employee from another classification when necessary without being required to go through any immediate supervisor. For example, a production employee testified that when he needs electrical or mechanical assistance he will go directly to an electrician or machinist to advise him of the problem. A machinist testified that four out of five times he will be asked directly by a production employee for assistance on a mechanical problem.

Supervision

Although the operational managers are primarily responsible for supervising certain employees, they are directly responsible for supervising the work of other employees when those other employees are performing work in their departments. For example, Houseman, primarily responsible for overseeing the work of the production employees in brewing, will supervise the work of electricians when they are performing electrical work in the brewery. Also, for example, a mechanic performing mechanical work in packaging will report to Cooke even though he is primarily supervised by Hardcastle.

Houseman testified that all maintenance employees, including the powerhouse employees, work for all three supervisors. He stated that even though work assignments are usually made through the primary supervisor, all three supervisors may at their own discretion use the services of any maintenance employee. Houseman stated that when he needs a maintenance employee he will notify supervisor Hardcastle who will in turn send him a

maintenance employee depending on the particular problem. On a daily basis, Houseman supervises the work of a powerhouse employee because that employee is used to start and stop making plainer water, heat water for brewing, set up schedules for brewing, and make deliveries of carbon dioxide

Production and Maintenance Work

The Employer's job description for production employees reads as follows: Operate high-speed packaging equipment, forklifts, brewing process equipment/controls, perform any other duties as required. The Employer's job description for electricians reads as follows: "Good knowledge of PLCs, wire/troubleshoot 480 VAC3 phase motor control centers, install/troubleshoot analog instrument loops, perform other duties as required." The Employer's job description for machinists reads as follows: "Perform maintenance/repair work to high-speed packaging/brewing process equipment, perform milling, lathe and welding work, operate production equipment, perform other duties as required." The Employer's job description for powerhouse engineers reads as follows: "Licensed powerhouse operating engineer, NH₃ & glycol refrigeration experience, steam generation, water treatment, compressed air systems, CO₂ collection, mechanical/electrical work as needed." Houseman testified that when employees were interviewed for a particular job classification, they were specifically informed that they were expected to do "whatever was necessary to get the job done." He said that the applicants were told they would perform other duties, other than those described for their specific job classification, on a routine basis.

A production employee assigned to brewing testified that he performs maintenance and electrical work often. He testified that his former employer, Stroh, prohibited such activity. For example, he stated that he helps the powerhouse engineers by controlling the temperature in the

cellars. He will turn on the refrigeration units for them and will also change pumps. Electrically, he changes fuses and resets breakers. He stated that he maintains a set of basic hand tools, such as wrenches, sockets, screwdrivers, pipe and Allen wrenches, to perform minor repairs.

Houseman testified that maintenance employees are cross-training production employees to perform preventive maintenance. He stated, for example, that the production employees, both in brewing and packaging, lube and oil their own equipment.

The production employees in brewing are responsible for the entire brewing process, which includes brewing, fermenting and filtering the beer. Houseman testified that these employees perform the brewing function most of the time with about five percent of their work time dedicated to general maintenance and other production functions such as helping to get the production line running in the morning.

The electricians have a small electrical shop located next to the packaging area from where they monitor the brewing and processing equipment. The room has its own entrance. The electricians also use the room as a workshop to make small repairs. For larger repairs they use the machine shop which is located next to the electrical shop. The electricians spend only about five percent of their work time in the electrical shop. They spend the rest of their work time in the production area.

The machinists have a mechanical shop which they use to perform major repairs. This work area is shared by the production workers on occasion. When the machinists are not working in the shop they are working in the production area repairing machinery. Houseman testified that about 80 percent of the machinists' work time is spent in the production area, unless they are working on a special project. When working in the production area, the machinists work right next to the production employees.

The powerhouse engineers generally work in the powerhouse. However, when the powerhouse is down on the weekends, the powerhouse engineers are given other maintenance duties to perform.

There has been no permanent interchange of employees between the maintenance and production classifications. Although powerhouse engineers do other mechanical work on the weekends, no other employees other than the powerhouse employees are qualified to perform powerhouse work. A production employee cannot fill in for a mechanic or for an electrician. As far as filling in for production employees, there is a designated relief production employee who does the relieving on the production line and in brewing when necessary.

Other Working Conditions

The Employer has no written policy and procedure manual. All employees, salaried and hourly, receive the same fringe benefits which include a 401(k) plan and an insurance plan. The same holidays are recognized in all areas of the Employer's operations. All employees are entitled to vacation based on an allotment formula which is the same for all employees. Other benefits include bereavement, long-term disability, and health insurance. Paychecks for all employees are distributed weekly on Wednesdays. The Employer also has a safety program which rewards employees with free lunch at the facility and a free case of beer for each employee for every month in which there is no lost time due to accidents.

All employees enter the building through the same front entrance. Both production and maintenance employees share the same lunch room. They place their meals in a refrigerator located in the lunch room. Houseman testified that both production and maintenance employees share the lunch room at the same time, especially before the workday begins, during breaks and during lunchtime. The production and maintenance employees share the same locker room

located in the main building. Although the powerhouse has a locker room of its own, those locker rooms are used mainly by the powerhouse employees for the storage of their tools. None of the employees wear uniforms, nor do they wear any identification. All employees carry a basic badge which is used to get into the building.

The Employer has three different pay classifications. All employees within each classification receive the same rate of pay. Production employees earn \$14.40/hr., machinists and electricians earn \$15.40/hr. and powerhouse employees earn \$15.90/hr. There is no time-clock at the Employer's facility. Employees report their time based on an honor system by recording their time on a timesheet located in the lunch room. The time sheet is the same for all production and maintenance employees. Checks are issued locally for all hourly employees. Employees receive their paychecks from their immediate supervisor; production employees receive their checks from Houseman or Cooke and the maintenance employees from Hardcastle.

Analysis

As noted above, Petitioner Teamsters seeks to represent a bargaining unit consisting only of all production employees employed at the Employer's facility located in Tampa, Florida. Petitioner Operating Engineers seeks to represent a bargaining unit consisting only of all maintenance employees, which includes maintenance worker/electricians, maintenance worker/machinists, and maintenance worker/powerhouse engineers. The Employer argues that the only unit appropriate for bargaining is a wall-to-wall unit comprised of all of the aforementioned classifications.

It is well established that the Act does not require the Board to approve the most appropriate or comprehensive unit, but simply an appropriate unit. Executive Resources Associates, 301 NLRB 400, 401 (1991); Morand Brothers Beverage Co., 91 NLRB 409 (1950),

enfd. 190 F.2d 576 (7th Cir. 1951); Gateway Equipment Co., 303 NLRB 340 (1991). To constitute a separate appropriate unit, the Board requires that the petitioned-for employees comprise a readily identifiable group whose “similarity of function and skills create a community of interest such as would warrant separate representation.” American Cyanamid Co., 131 NLRB 909, 910 (1961); Harrah’s Illinois Corp., 319 NLRB 749 (1995). In assessing the appropriateness of the units sought, the undersigned is guided by several criteria for determining whether the community of interest standard is met, including similarity in employee skills, job duties, and working conditions, supervision, functional integration, employee interchange, and collective-bargaining history. Oklahoma Installation Co., 305 NLRB 812 (1991); Carson Cable TV, 795 F.2d 879, 884-885 (9th Cir. 1986). On the facts presented, I find that a single unit comprised of all production and maintenance employees employed at the Employer’s facility located in Tampa, Florida is appropriate and that the smaller units sought by the Petitioners are not. Substantial community of interest factors support this conclusion.

The record reveals that the Employer’s operation is highly integrated. Furthermore, there is a significant degree of interaction among the employees in the petitioned-for units and there is an overlap of functions among the maintenance and production employees. For example, the cooperation of both production and maintenance employees is required for the purpose of getting the production line started and to complete production at the end of the day. Also, maintenance employees work side by side with, and require the assistance of, production employees when repairing production equipment on the line. Production employees directly seek out the assistance of maintenance employees when confronted with a mechanical problem they are unable to resolve. Production employees perform certain types of minor electrical and mechanical work and are also being trained on performing preventive maintenance on the

production equipment. They have also been used to assist maintenance employees with special projects. With the exception of the powerhouse employees who spend their working day in the powerhouse physically separated from the other employees, the electricians and machinists work in close proximity with production employees who are all located in the main building.

The fact that the same working conditions apply to all employees provides further support for finding a single unit. All employees are subject to identical established wage parameters and policies regarding fringe benefits and holidays. There is also commonality in supervision. Although maintenance employees are primarily supervised by their designated operational manager, when they perform maintenance work in production (either brewing or packaging), they will be directly supervised by the operational managers in charge of those production areas.

There is no history of collective bargaining between the parties. Petitioners maintained separate collective bargaining agreement with Stroh's, the prior owner of the Employer's facility. However, Petitioners make no claim that the Employer is Stroh's successor employer. Although Petitioner Teamster's sister Local 830 maintains a collective-bargaining agreement with the Pottsville facility covering all of its employees, the evidence is clear that the Employer is a separate corporate entity and there is insufficient evidence relating to the type of operation run at the Pottsville facility to draw any conclusions therefrom. In view of the above, I find there is no relevant bargaining history to consider.

In conclusion, the evidence is insufficient to establish that separate units, one comprised of all production employees and the other of maintenance employees, are appropriate. I shall, therefore, dismiss the petition in Case 12-RC-8469, as Petitioner Operating Engineers is unwilling to go to an election in a unit other than in the petitioned-for unit. I shall, however,

direct an election in Case 12-RC-8470, as Petitioner Teamsters is willing to go to an election in a unit found appropriate by the undersigned. Accordingly, in view of the foregoing and the record as a whole, I find that the following employees of the Employer constitute an appropriate unit for the purpose of collective bargaining within the meaning of Section 9(b) of the Act:

All full-time and regular part-time production workers - job code 103, maintenance workers/electricians – job code 101, maintenance workers/machinists – job code 102, and maintenance workers/powerhouse engineers – job code 104, employed by the Employer at its Tampa, Florida facility; excluding all other employees, guards, and supervisors as defined in the Act.

ORDER

IT IS HEREBY ORDERED that the petition filed in Case 12-RC-8469 be, and it hereby is, dismissed.

DIRECTION OF ELECTION

An election by secret ballot shall be conducted by the undersigned in Case 12-RC-8470 among the employees in the unit found appropriate at the time and place set forth in the notice of election to be issued subsequently, subject to the Board's Rules and Regulations. Eligible to vote are those in the unit who were employed during the payroll period ending immediately before the date of this Decision, including employees who did not work during that period because they were ill, on vacation or temporarily laid off. Also eligible are employees engaged in an economic strike which commenced less than 12 months before the election date and who retained their status as such during the eligibility period and their replacements. Those in the military services of the United States may vote if they appear in person at the polls. Ineligible to vote are employees who have quit or been discharged for cause since the commencement thereof and who have not been rehired or reinstated before the election date and employees engaged in an economic strike which commenced more than 12 months before the election date and who

have been permanently replaced.⁹ Those eligible shall vote whether or not they desire to be represented for collective bargaining purposes by International Brotherhood of Teamsters Local 79, AFL-CIO, CLC.¹⁰

DATED at Tampa, Florida, this 29th day of March, 2000.

/s/ Rochelle Kentov
Rochelle Kentov, Regional Director
National Labor Relations Board, Region 12
201 E. Kennedy Boulevard, Suite 530
Tampa, Florida 33502

440-3300
420-4600
420-6200

⁹ In order to assure that all eligible voters may have the opportunity to be informed of the issues in the exercise of their statutory right to vote, all parties to the election should have access to a list of voters and their addresses which may be used to communicate with them. Excelsior Underwear, Inc., 156 NLRB 1236 (1966); N.L.R.B. v. Wyman-Gordon Company, 394 U.S. 759 (1969). Accordingly, it is hereby directed that two (2) copies of an election eligibility list, containing the full names and addresses of all eligible voters, must be filed by the Employer with the Regional Director for Region 12 within 7 days of the date of this Decision and Direction of Election. North Macon Health Care Facility, 315 NLRB 359 (1994). In order to be timely filed, such list must be received by the Regional Office, SouthTrust Plaza, Suite 530, 201 E. Kennedy Boulevard, Tampa, Florida 33602-5824 on or before April 5, 2000. No extension of time to file this list shall be granted except in extraordinary circumstances, nor shall the filing of a request for review operate to stay the filing of such list. Failure to comply with this requirement shall be grounds for setting aside the election whenever proper objections are filed.

¹⁰ Under the provisions of Section 102.67 of the Board's Rules and Regulations, Series 8, as amended, a request for review of this Decision may be filed with the National Labor Relations Board, addressed to the Executive Secretary, 1099 14th Street, NW, Washington, DC 20570-0001. This request must be received by the Board in Washington, DC by April 12, 2000.